

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE *MR.*)
JUSTICE *H.J. WILTON - Spence*)

TUESDAY, THE 11TH)
DAY OF DECEMBER, 2018)

AMF

BETWEEN:

(Court Seal)

CWB MAXIUM FINANCIAL INC.

Plaintiff

and

1970636 ONTARIO LTD. O/A MT. CROSS PHARMACY,
UMAIR N. NASIM, SHRIKANT MALHOTRA, 1975193 ONTARIO LTD. dba
MTN RX & HEALTH and ANGELO KIRKOPOULOS

Defendants

APPROVAL AND VESTING ORDER

THIS MOTION, made by msi Spergel inc. (“**Spergel**”), in its capacity as the court-appointed receiver (the “**Receiver**”) of all of the undertaking, property and assets (the “**Property**”) of 1970636 Ontario Ltd. dba Mt. Cross Pharmacy (the “**Debtor**”) for an order, among other things, approving the sale transaction (the “**Transaction**”) contemplated by a form of agreement of purchase and sale (the “**Sale Agreement**”) between the Receiver and 2654356 Ontario Inc., doing business as Joice Pharmacy and Medical Clinic (the “**Purchaser**”), and vesting in the Purchaser the Debtor’s right, title and interest in and to the assets described in the Sale Agreement (the “**Purchased Assets**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Receiver dated December 4, 2018, including the Second Report of the Receiver dated December 4, 2018 (the “**Second Report**”), and on hearing the submissions of counsel for the Receiver and CWB Maxium Financial Inc., no one else appearing although properly served as evidenced by the affidavit of Shallon Garrafa sworn December 4, 2018, filed,

SERVICE

1. **THIS COURT ORDERS** that the time and manner of service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

APPROVAL OF TRANSACTION AND VESTING OF ASSETS

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver’s certificate to the Purchaser substantially in the form attached as Schedule A hereto (the “**Receiver's Certificate**”), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages,

trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (ii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the

Company's records pertaining to the Debtor's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

7. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

~~8. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).~~ 

SEALING

9. **THIS COURT ORDERS** that the Bid Summary attached as Confidential Appendix 1 and the unredacted Sale Agreement attached as Confidential Appendix 2 to the Second Report be and are hereby sealed pending the closing of the Transaction or further Order of the Court.

VENDOR TRUST FUNDS

10. **THIS COURT DECLARES** that the Vendor Trust Funds, being the \$110,136.59 being held in the trust account of Faber & Oostdyk o/u Sean Oostdyk Professional Corporation and referred to at Section 4 of the Second Report, constitute Property.

APPROVAL OF REPORTS, ACTIVITIES AND FEES

11. **THIS COURT ORDERS** that the First Report of the Receiver dated July 24, 2018, the Supplement to First Report of the Receiver dated July 25, 2018, the Second Report and the activities of the Receiver described therein including, without limitation, the Receiver's interim statement of receipts and disbursements as at December 3, 2018, be and are hereby approved.

12. **THIS COURT ORDERS** that the fees and disbursements of Spergel in its capacity as the interim receiver of the Company (the "**Interim Receiver**") for the period from May 16, 2018 to June 13, 2018, as described in the Affidavit of Mukul Manchanda sworn December 3, 2018 attached as Appendix 5 to the Second Report, be and are hereby approved.

13. **THIS COURT ORDERS** that the fees and disbursements of the Receiver for the period from June 14, 2018 to November 30, 2018, as described in the Affidavit of Mukul Manchanda

sworn December 3, 2018 attached as Appendix 8 to the Second Report, be and are hereby approved.

14. **THIS COURT ORDERS** that the fees and disbursements of Pallett Valo LLP (“PV”) in its capacity as counsel for the Interim Receiver for the period from May 16, 2018 to June 13, 2018, as described in the Affidavit of John Russo sworn December 4, 2018 attached as Appendix 7 to the Second Report, be and are hereby approved.

15. **THIS COURT ORDERS** that the fees and disbursements of PV in its capacity as counsel for the Receiver for the period from June 14, 2018 to October 31, 2018, as described in the Affidavit of John Russo sworn December 4, 2018 attached as Appendix 9 to the Second Report, be and are hereby approved.

GENERAL

16. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

DEC 11 2018

PER / PAR:


(Signature of Judge)

SCHEDULE "A" – FORM OF RECEIVER'S CERTIFICATE

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

CWB MAXIUM FINANCIAL INC.

Plaintiff

and

**1970636 ONTARIO LTD. O/A MT. CROSS PHARMACY,
UMAIR N. NASIM, SHRIKANT MALHOTRA, 1975193 ONTARIO LTD. dba
MTN RX & HEALTH and ANGELO KIRKOPOULOS**

Defendants

RECITALS

A. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated June 14, 2018, MSI Spergel Inc. was appointed receiver of all of the undertaking, property and assets of 1970636 Ontario Ltd. dba Mt. Cross Pharmacy (the "**Debtor**").

B. Pursuant to an Order of the Court dated December 11, 2018, the Court approved the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale between the Receiver and 2654356 Ontario Inc., doing business as Joice Pharmacy and Medical Clinic (the "**Purchaser**") dated December 11, 2018 (the "**APS**") and vesting in the Purchaser the right, title and interest of the Debtor in and to the Purchased Assets (the "**Purchased Assets**") described in the APS and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price (as defined in the APS) (the "**Purchase Price**") for the Purchased Assets; (ii) that the conditions to Closing as set out in the APS have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the APS.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the APS;
2. The conditions to Closing as set out in the APS have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ on _____, 2018.

**msi Spergel inc., in its capacity
as Receiver of 1970636 Ontario
Ltd. dba Mt. Cross Pharmacy,
and not in its personal capacity**

Name:

Title:

CWB MAXIUM FINANCIAL INC.
Plaintiff

-and-
Defendants

1970636 ONTARIO LTD. O/A MT. CROSS PHARMACY et al.

Court File No. CV-18-597922-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

APPROVAL AND VESTING ORDER

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Lawyers for the Receiver, msi Spergel inc.